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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,501	07/05/2006	Jean-Christophe Giron	283486US0PCT	9280
22850	7590	12/09/2009		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER NELSON, MICHAEL B				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
12/09/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed on 11/23/09 have been considered but are not persuasive.
2. Applicant argues that the examiner has made a "clearly erroneous finding" in concluding that the stack of Giron would be obviously flipped between the two possible configurations when being installed as a window. The examiner disagrees. In short, applicant makes numerous citations to Giron to show that Giron specifies the order of the layer in the stack using terms like "above," "below," "carrier," "first," "second," etc. The examiner does not dispute that the layers are arranged in an order but the critical difference, which was explained in the previous office action, is that **Giron's arrangement of the layers in his stack is not given with any reference to how the stack should be installed as a window.** Applicant includes a diagram depicting how he sees the prior art and the instant invention to be different, however his diagram actually shows the clear erroneous assumption he is making. The diagram includes a sun that the applicant uses to show which side of the stack faces the outside and which side faces the inside. Giron does not disclose any reference to the sun or the outside or to any type of configuration that can be taken as relating to how the glazing should be finally installed in a window frame. Hence applicant's diagram is misleading because it implies that Giron referenced how the stack should be oriented with respect to the sun when in fact the reference has no such disclosure.
3. Because Giron does not disclose which side of his stack should face the outside when it is installed as a window, one having ordinary skill in the art would then have the simple task of choosing between two possible configurations: the one where the side with the active stack is facing inside and the one where the side with the active stack is facing outside. From this

incredibly limited set of possible arrangements, one having ordinary skill in the art would have found it obvious to have arrived at applicant's arrangement.

4. Later in applicant's arguments, it is argued that it "is understood in the relevant field" that the terms used in the Giron like "below" and "above" correlate, implicitly, to the outside environment being above the stack. There is nothing on the record to support this allegation and the examiner refutes it. In the art of making glazings it is entirely common to disclose an invention that only relates to the glazing itself and to leave out any mention of how the glazing should be installed as a window because it is understood that the particular arrangement of the glazing in its final application would be obviously controlled by the one having ordinary skill in the art of installing windows based on the particular needs of the customer.

5. Applicant gives several of their own reasons why one having ordinary skill would not flip the stack, however the examiner notes that none of these are disclosed in Giron (i.e. to teach away from that configuration) and there are numerous reasons why one having ordinary skill in the art would flip the stack when installing the windows.

6. Applicant then argues for unexpected results and claims that the examiner has made a legal error in not considering his allegation. The examiner disagrees. The examiner **has** considered applicants arguments of unexpected results and has concluded that because the prior art stack is exactly the same as the instant stack except for the fact that it does not disclose which side faces outside when it is installed, and because one having ordinary skill in the art would have found it obvious to flipped the stack between its two possible orientations, applicant's results are not unexpected because they would be realized by one having ordinary skill in the art through the obvious adjustment of the orientation of the stack of Giron.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL B. NELSON whose telephone number is (571) 270-3877. The examiner can normally be reached on Monday through Thursday 6AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David R. Sample/  
Supervisory Patent Examiner, Art Unit 1794

/MN/  
12/03/09